

SEP 20 2004

Docket No. F-7936

MAILSTOP PETITION

**Attention: Edward J. Tannouse
PETITIONS ATTORNEY
OFFICE OF PETITIONS**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

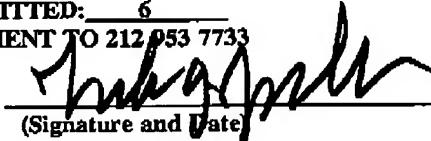
Applicant : Kenji OZAWA, et al.
 Serial No. : 10/658,872
 Filed : August 26, 2003
 For : TIME RECORDER
 Customer No. : 000028107

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Frank J. Jordan
 (Name)


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MAIL STOP PETITION
 Commissioner for Patents
 P.O. Box 1450
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**SECOND PETITION UNDER 37 CFR 1.10(c) REQUESTING
CORRECTION OF THE FILING DATE**

Sir:

Applicant acknowledges receipt of the Decision Dismissing Petition dated September 9, 2004 (copy enclosed) submitted by Edward J. Tannouse, Petitions Attorney, Office of Petitions.

In this Decision dismissing Petition, the Petition's Examiner states as follows:

F7936 Position02 (PC 4).wpd

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"It should be noted that based on the documentary evidence that has been submitted, petitioner may contend that the above-identified application was received by the USPTO on August 28, 2003. If petitioner wishes to pursue this later filing date, petitioner should do as such in any request for reconsideration that petitioner may wish to file."

In view of the above, applicant respectfully requests reconsideration and that the above-identified application be considered as having been received by the USPTO on August 28, 2004.

Applicant incorporates herein by reference the previously filed Petition dated August 19, 2004 along with all of the documentary evidence attached thereto.

In view of the above, it is respectfully requested that the Patent Office correct its records to show the filing date of August 28, 2003 and that applicant be advised that such correction has been made before the patent issues bearing in mind that the Notice of Allowance issued on July 30, 2004 and the Issue Fee is required to be paid by September 30, 2004.

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It is believed there is no charge for filing this Petition. However, if there is, please charge to Deposit Account 10-1250.

Respectfully submitted,

JORDAN AND HAMBURG LLP

By 

Frank J. Jordan
Reg. No. 20,456
Attorney for Applicants

Jordan and Hamburg LLP
122 East 42nd Street
New York, New York 10168
(212) 986-2340

FJJ/cj
Enc.

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JORDAN AND HAMBURG LLP
122 EAST 42ND STREET
SUITE 4000
NEW YORK, NY 10168

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SEP 09 2004

OFFICE OF PETITIONS

In re Application of : DECISION DISMISSING
Ozawa, et al. : PETITION
Application No. 10/658,872 :
Filed: July 28, 2003 :
Attorney Docket No. F-7936 :
:

This is a decision on the papers styled, "Petition Under 37 CFR 1.131 Requesting Correction Of The Filing Date," filed August 23, 2004, which has been treated as a petition under 37 CFR 1.10(c), requesting that the above-identified application be accorded a filing date of August 26, 2003, rather than the presently accorded filing date of July 28, 2003.

The petition is dismissed.

Petitioners allege that the application was deposited in USPS Express Mail service on August 26, 2003. In support, the petition is accompanied by a copy of a USPS "Track & Confirm" document that indicates the Express Mail package with Express Mail label no. EV322920525US (the same number found on the new application transmittal) was received by the USPTO on August 28, 2003. It is noted that the USPS "Track & Confirm" document does not indicate when the item was actually deposited in the USPS Express Mail service. Furthermore, it is noted that USPTO records indicate application file no. 10/658,872 was filed on July 28, 2003.

Paragraph (c) of 37 CFR 1.10 states that:

"Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date

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as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit." (Emphasis supplied)

A grantable petition under 37 CFR 1.10(c) must include "a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit."

The petition filed August 23, 2004, is not accompanied by the required true copy of the "Express Mail" receipt. However, petitioner has submitted other official notation by the USPS in the form of the copy of the USPS "Track & Confirm" document. However, this document only shows the date of receipt of the item by the USPTO but fails to show the date of deposit, as required by 37 CFR 1.10(c)(3). As such, the filing date of August 26, 2003 cannot be found in the documentary evidence supplied by petitioner.

Accordingly, the petition filed August 23, 2004, does not contain the true copy of the "Express Mail" mailing label showing the "date-in" as required by the rule nor does it contain any other official notation by the USPS relied upon to show the date of deposit and as such must be dismissed. However, the dismissal is without prejudice to reconsideration if petitioner can provide the necessary "Express Mail" mailing label showing the "date-in" as required by the rule or any other official notation by the USPS relied upon to show the date of deposit of August 26, 2003.

It should be noted that based on the documentary evidence that has been submitted, petitioner may contend that the above-identified application was received by the USPTO on August 28,

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2003. If petitioner wishes to pursue this later filing date, petitioner should do as such in any request for reconsideration that petitioner may wish to file.

The application is being returned to Technology Center 2800 with the presently accorded filing date of July 28, 2003.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: Customer Service Window
2011 South Clark Place
Crystal Plaza Two (left side entrance of building)
Arlington, VA

Telephone inquiries should be directed to the undersigned at (703) 306-9200.



Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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